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EXAMINER

BLANCO, JAVIER G

ART UNIT	PAPER NUMBER
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3738

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/631,576

Filing Date: August 4, 2000

Appellant(s): BLAKE, LARRY

Larry Blake
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 31, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement that there are no related appeals and interferences is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct. However, and as result of the Appeal Conference of August 17, 2005, issues (A), (B), and (C) are hereby withdrawn. The only pending issue will be whether claims 40, 51-53, 56-61, 67-69, 74, 75, and 77-79 are unpatentable under 35 U.S.C. 103(a) over Lecoq (FR 2 770 394).

(7) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 40, 51-53, 56-61, 67-69, 74, 75, and 77-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lecoq (FR 2 770 394).

With specific reference to Figures 3 and 5-13, Lecoq teaches an attachment for a two-part IOL comprising at least two cleats (anchoring tabs 24) on the optic (made of silicone or similar material) extending generally in the direction of the plane of the optic, and at least two eyelets (radial grooves 22) on the haptic (made of PMMA) allowing each of said cleats to firmly attach to one of said eyelets on the haptic. Said two-part IOL *is configured to* (emphasis added to functional language) pass completely (or separately) through a small opening ("*petite incision*") without folding the haptic, as described throughout the entire document, particularly page 5, lines 20-24.

With regards to independent claims 77 and 78, Lecoq does not particularly disclose the radial grooves 22 as "eyelets". It should be noted that slots, eyelets, apertures, or notches are consider obvious equivalents in the art, as admitted by the Applicant in the present application at page 13, lines 20-21 (see Figures 8B and 8E). Applicant's own admission is evidence that slots, eyelets, apertures, or notches are functionally equivalent, compatible, and interchangeable. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used either slots, eyelets, apertures, or notches, as admitted by Applicant, to be attached to a cleat, since such designs are functionally equivalent, compatible, and interchangeable. One of ordinary skill in the art, furthermore, would have expected any of these designs (i.e., slot, eyelet, aperture, or notch) to perform equally well with a cleat as long as the cleat will firmly attach to the corresponding slot, eyelet, aperture, or notch, but will allow for easy removal of the lens (i.e., "*changer facilement de lentille*"; see page 4, lines 18-21). Also, the incision required for insertion would still be minimal (as disclosed at page 5, lines 20-24 and throughout the document).

With regards to independent claims 40 and 79, Lecoq discloses the claimed invention except for particularly disclosing the haptic rather than the optic having the cleats. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have added cleats to the haptic and eyelets to the optic, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

With regards to dependent claims 57 and 58, Lecoq teaches the claimed invention except for particularly disclosing KAPTON or polyphenylsulfone (PPSU) as the haptic material. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have used said materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability of the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With regards to dependent claims 59-61, Lecoq teaches the claimed invention except for particularly disclosing the modulus ranges set forth in claims 59-61. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the haptic with a particular modulus (e.g., 100,000 to about 500,000 psi/inch) since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

(9) Response to Argument

a. Applicant argues that there is no suggestion in Lecoq to change the channel into an eyelet since, according to the Applicant, the attachment of Lecoq “does not perform in the way that a

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cleat and eyelet would". Examiner respectfully disagrees. As previously stated (see 103(a) rejection above), slots, eyelets, apertures, or notches are consider obvious equivalents in the art, as admitted by the Applicant in the present application at page 13, lines 20-21 (see Figures 8B and 8E). One of ordinary skill in the art, furthermore, would have expected any of these designs (i.e., slot, eyelet, aperture, or notch) to perform equally well with a cleat as long as the cleat will firmly attach to the corresponding slot, eyelet, aperture, or notch, but will allow for easy removal of the lens.

b. Applicant argues that the attachment of Lecoq "renders attachment of the optic to the haptic within the eye risky". Examiner respectfully disagrees. Lecoq clearly discloses easy removal of the lens (i.e., "*changer facilement de lentille*") from the haptic (see page 4, lines 18-21; see entire document). Also, the attachment of Lecoq will also allow for the natural movements of the eye.


Respectfully submitted,

Javier G. Blanco




August 18, 2005

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